

**ENTERED**

January 22, 2021

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
LAREDO DIVISION


**UNITED STATES OF AMERICA,**

**Plaintiff,**

V.

**3.817 ACRES OF LAND, MORE OR LESS, SITUATED IN ZAPATA COUNTY, STATE OF TEXAS; AND ZAPATA COUNTY,**

**Defendants.**



**CIVIL ACTION NO. 5:20-CV-77**

## ORDER

Before this Court is Opposed Motion of the United States of America for Order of Immediate Possession. (Dkt. No. 10). Defendant Zapata County, Texas (“Zapata County”) has filed its response and objections. (Dkt. No. 19).

Among the objections asserted by Zapata County is the argument that the United States has not conducted bona fide or good faith pre-suit negotiations to purchase of the right of entry sought by the government. (Dkt. No. 19 at 2). This Court has ruled in a separate case that 8 U.S.C. § 1103(b)(3) requires the United States to make a bona fide effort to negotiate for the purchase of the property interest sought—in this case a right of entry—before filing a condemnation lawsuit. *United States v. 3.572 Acres of Land, and Guillermo Caldera*, Civil Action No. 5:20-CV-39, CM/ECF Dkt. No. 28 at 9 (S.D. Tex. January 22, 2021). Additionally, the Court may direct further negotiations as a condition precedent to condemnation if it finds the negotiations have, so far, been inadequate. (*Id.* at 12).

The Court takes judicial notice of a recent Executive Order by President Joseph R. Biden which promulgates a dramatic a shift in policy toward the construction of the border wall. *See* Proclamation on the Termination of Emergency with Respect to the Southern Border of the United States and Redirection of Funds Diverted to Border Wall Construction (Jan. 29, 2021) (Federal Register publication forthcoming). The Court is concerned that the Administration's shift in policy may likewise signal a shift in the

Government's posture toward negotiations for acquisition of a right of entry from Defendant Zapata County and other property owners.

As a result of the foregoing, the Court **ORDERS** the United States to file a supplement to its motion for order of immediate possession (Dkt. No. 10) by **February 3, 2021** that provides: (1) a statement of whether the United States intends to pursue this lawsuit in general and the motion for order of immediate possession in particular; and (2) further proof of either additional bona fide negotiations with Zapata County as to the acquisition of the right of entry or a statement that the parties remain unable to reach an agreement at a price satisfactory to the United States for the purchase of the right of entry it seeks in this case. The proof of bona fide negotiations must include a statement of the last offers made by each of the parties. The Court expects that the information provided in the United States' supplement will reflect communications with the appropriate agency representatives.

It is so **ORDERED**.

**SIGNED** on January 22, 2021.

  
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John A. Kazen  
United States Magistrate Judge